

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 3460 of 1997

with

CRIMINAL MISC. APPLICATION No 3073 of 1997

with

CRIMINAL MISC. APPLICATION No 3615 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 NO

VINUBHAI RAVJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner

MR KT DAVE APP for Respondent No. 1

MR ASHIN H DESAI for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 05/08/98

ORAL JUDGEMENT

Looking to the facts of the cases, all the three

matters are heard and disposed of together.

2. Complaints were filed in the Court of the learned Judicial Magistrate, First Class at Junagadh by Respondent No.2 alleging that the petitioner had given cheques which had been dishonoured. By virtue of the present applications, the petitioner, who had issued three cheques, [in respect of each cheque separate complaint was filed] has approached this court with a prayer that the complaints filed against him be quashed.

3. Learned Advocate Mr. Yatin Soni appearing for the petitioner has submitted that the complaints are nothing but abuse of process of law because the cheques which are subject- matter of the complaints, were obtained from the petitioner by office bearers of Respondent No.2 company by force. He has submitted that the petitioner has filed criminal complaints against the office bearers of Respondent No.2 as the cheques were obtained by force. It has also been submitted that the petitioner had already given intimation to the banker and to Respondent No.2 that the cheques in question should not be presented before the bank. Mr. Soni has, thereafter, submitted that civil suits have been filed by the parties to the litigation and, therefore, the complaints filed by Respondent No.2 are not maintainable. He has submitted that one civil suit has been filed by the present petitioner against Respondent No.2, whereas Respondent No.2 has also filed three civil suits against the petitioner. Thus, it has been submitted that, there is a civil dispute between the petitioner and Respondent No.2 and, therefore, the complaints are not maintainable. Thereafter, it has been submitted by Mr.Soni that the complaints are not maintainable for the reason that the notice issued by Respondent No.2 to the petitioner is not legal and valid as the petitioner was called upon to make payment within a period of eight days from the date of receipt of the notice. According to him, at least 15 days ought to have been given to the petitioner for making payment in respect of the cheques which had been dishonoured.

4. I have heard the learned Advocates.

5. The averment with regard to the force used by Respondent No.2 in procuring the cheques can be one of the defences of the petitioner in the trial. At this stage, it would not be proper for this court to look into the facts which are not forming part of the record of the trial court. In the circumstances, the averments with regard to the force used by Respondent No.2 cannot be

taken into account.

6. So far as the intimation Respondent No.2 and bank is concerned, simply because the petitioner had given an intimation to Respondent No.2 that the cheques should not be presented, or with regard to giving instructions for stoppage of payment to the bank, the petitioner cannot be absolved from his liability to make payment. The Hon.'ble Supreme Court has held in the case of M/S. MODI CEMENTS LTD. v. KUCHIL KUMAR NANDI 1998 Criminal Law Journal 1357 that such a notice or intimation would not preclude an action under Section 138 of the Negotiable Instruments Act.

7. So far as filing of civil suits are concerned, it is clear that the complaints in question have been filed because of dishonour of the cheques. Pendency of civil proceedings would not debar Respondent No.2 from taking appropriate legal action under the provisions of Section 138 of the Negotiable Instruments Act.

8. So far as the defect in the notice is concerned, it has been fairly admitted by Mr.Soni that, till today, the amount in question has not been paid by the petitioner to Respondent No.2. I do not think that the so-called defect is so vital that would vitiate the proceedings initiated in the Court of the learned Judicial Magistrate, First Class at Junagadh. It would be open to the petitioner to take the said defence, if permissible, before the trial court.

9. In view of the above circumstances, I do not think that this court should interfere with the criminal proceedings pending before the trial court. The applications are, therefore, dismissed. Rule is discharged in each application. Ad-interim relief granted earlier stands vacated.

10. Learned Advocate Mr.Soni has requested for staying implementation of this order for four weeks. I do not see any reason to stay implementation of this order. The request is rejected.

Sd/-

[KMG Thilake]

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